

MINUTES OF A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MAMARONECK, NEW YORK, HELD ON THURSDAY, FEBRUARY 7, 2013 AT 7:30 P.M. IN THE COURTROOM AT 169 MT. PLEASANT AVENUE, MAMARONECK, NEW YORK.

These are intended to be “Action Minutes” which primarily record the actions voted on by the Zoning Board at the meeting held February 7, 2013. The full public record of this meeting is the audio/video recording made of this meeting and kept in the Zoning Board’s Records.

PRESENT: Lawrence Gutterman, Chairman
Barry Weprin, Vice Chairman
Robin Kramer, Secretary
Greg Sullivan, Board Member
Anna Georgiou, Counsel to Board
Joe Angiello, Assistant Building Inspector

ABSENT: Dave Neufeld, Board Member

Kathleen McSherry, Court Reporter, was present at the meeting to take the stenographic minutes, which will not be transcribed unless specifically requested.

CALL TO ORDER

Vice Chairman Weprin called to order the Regular Meeting at 7:34 p.m. He stated that Dave Neufeld was not yet present and may not be able to attend the meeting tonight. He also noted for the record that Chairman Gutterman would be late, but should arrive by 8:00 p.m.

Vice Chairman Weprin stated that one of the applicants (Applications #4A-2013 and #5A-2013) needed to re-notice for the March 7th meeting because they sent out the public hearing notice with the incorrect date. Vice Chairman Weprin stated that the applicant could address the Board this evening with the understanding that he would need to re-notice the hearing and come back in March. The applicant stated that he wished to stay for tonight’s meeting.

PUBLIC HEARINGS

1. Application #18SP-2009, LUCIANO SAVONE D/B/A ENZO’S RESTAURANT, 443-451 Mamaroneck Avenue (Section 9, Block 11, Lot 5), to renew a modified special permit to operate and expand a restaurant into an adjacent building. (C-2 District)

Carolina Savone, the applicant for Enzo’s Restaurant, addressed the Board. Vice Chairman Weprin asked if the applicant was doing anything other than renewing their special permit, such as expanding. She stated that she is requesting a renewal of a special permit she received in 2009. Vice Chairman Weprin asked if there were any violations and Ms. Savone stated there were none. Ms. Kramer asked for clarification as to whether the applicant was again expanding the restaurant or if this was simply a renewal of the previous special permit that allowed the applicant to expand. Ms. Savone stated that the restaurant is not expanding. Everything remains

the same, including the hours of operation, she noted. Ms. Savone also said that nothing has changed since they were before the Board in 2009.

Vice Chairman Weprin asked if anyone wished to address the Board. None did.

Mr. Sullivan moved to close the public hearing on Application #18SP-2009, seconded by Mr. Weprin.

Ayes: Kramer, Sullivan, Weprin
Nays: None
Absent: Gutterman, Neufeld

2. Application #3A-2013, ELIZABETH PAUL, 200 Fulton Road (Section 9, Block 22, Lot 16), for an area variance of Article V, Section 342-27 of the Schedule of Minimum Requirements where the applicant proposes to install a 10 foot by 12 foot storage shed on an existing concrete slab where the proposed shed has a 3.2 foot lesser side yard where 6 feet is required. The shed also violates the combined side yard setbacks where the applicant proposes 10.6 feet and 16 feet is required. (R-2F District)

Elizabeth Paul, the applicant, addressed the Board. She stated that she is seeking a variance for a side yard and combined yard setback to install a 10' by 12' storage shed. Ms. Paul said that the shed will be installed on an existing concrete slab. She said that when she purchased the house in 2009, it had a dilapidated barn/garage with the roof caving in and chicken coop, which extended onto the neighboring cemetery's property. She said that the insurance company wouldn't insure the structure as it was and it was too far gone to repair, so it needed to be demolished. Ms. Paul stated that it took her some time to save the funds to build the new shed.

Vice Chairman Weprin asked if the side yard setback is from the cemetery to the school property and Ms. Paul said that it was.

Mr. Sullivan noted for the record that the Town of Mamaroneck had submitted a letter to the ZBA stating that they had no objections to the application as it is proposed. The letter also stated that the new shed will eliminate the encroachment onto the Town's property.

Ms. Kramer stated that she had a question about what Ms. Paul is applying for. Ms. Kramer stated that in the application, it says that the applicant needs to use the driveway to store a trailer. Ms. Kramer asked why the applicant is building a shed and not a garage. Ms. Paul stated that the shed is not going to store a motor vehicle. It is a small camping trailer, Ms. Paul said. She also noted that she would like to store bicycles and lawn equipment in the shed. She also stated that the strange angle of the rear property makes it difficult to place the shed anywhere else.

Vice Chairman Weprin asked if the structure could be used as a garage for someone purchasing it in the future and Ms. Paul stated that she believes it would be too small to fit a vehicle.

Vice Chairman Weprin asked if anyone wished to address the Board. None did.

Mr. Sullivan moved to close the public hearing on Application #3A-2013, seconded by Ms. Kramer.

Ayes: Kramer, Sullivan, Weprin
Nays: None
Absent: Gutterman, Neufeld

3. Application #4A-2013, JEROME LE JAMTEL, 875 Pirates Cove (Section 9, Block 103, Lot 3), to obtain a Certificate of Compliance for Building Permit #23392 amended as Permit # 08-0026 for an in-ground pool and pool equipment where the proposed pool and pool equipment violates Article V, Section 342-27 of the Schedule of Minimum Requirements where the pool has a lesser side yard setback of 13.9 feet and 20 feet is required and the pool equipment has a lesser side yard setback of 16.6 feet and 20 feet is required AND Application #5A-2013, JEROME LE JAMTEL, 875 Pirates Cove (Section 9, Block 103, Lot 3), to obtain a Certificate of Occupancy for the deck and enclosed porch where the structure violates Article V, Section 342-27 of the Schedule of Minimum Requirements where the applicant has 16.6 feet for a lesser side yard and 20 feet is required. (R-20 District)

Vice Chairman Weprin stated that the applicant for 875 Pirates Cove did send out correct meeting notifications to the neighbors and had an incorrect date on the sign in front of the property. He noted that the applicant would need to re-notice the public hearing for the March 7th meeting, but could stay to begin the process. Ms. Kramer stated that whatever the applicant said today would need to be repeated at the March meeting. Ms. Georgiou stated that the better practice would be to hear the application at one time. Vice Chairman Weprin informed the applicant that he should re-notice for the next meeting.

Armando Insignares, the pool contractor, addressed the Board. He asked if he could address a couple of minor matters this evening regarding the violations. Mr. Insignares said that the first violations refer to the pool and decking. The violation indicates 13.9 feet where the pool is actually 19.6 feet and this is a difference of only 8 inches, Mr. Insignares said. Mr. Angiello stated that either way, the applicant would still need the variance. He went on to say that what is currently around the pool is a concrete deck and that is considered a structure as far as the Zoning Code is concerned. Mr. Angiello also stated that the original plan indicated the deck was going to be stone.

Mr. Insignares said that he doesn't believe that is the case. On the original plan, he noted, it specified concrete with a stone deck over it. Mr. Angiello stated that as he is reviewing the plan now, it appears to be a stone patio. Mr. Insignares directed Mr. Angiello to the other side of the plan. Mr. Angiello said he sees what Mr. Insignares is saying, but in any case, when the permit was granted that was a mistake and should have been caught at that time. Since the applicant is going for the 8 inches, he should go for the whole thing, Mr. Angiello stated.

Mr. Angiello asked if he had any further questions. Mr. Insignares asked for clarification on the issues with the Certificates of Occupancy. He thought the C of O's had gone through. Mr. Angiello said that the one that is in question is for Permit #2201 (enclosing of the screen porch)

and exterior deck). What was on the plans and what was ultimately built are not the same, he said. Mr. Angiello also stated that a survey was never done and that is one of the requirements to close things out.

Mr. Insignares said he did not understand why this wasn't addressed at the time the plans were submitted. Mr. Angiello said that he can't answer that because he wasn't here at the time. It may have been overlooked, he said. Mr. Insignares thanked Mr. Angiello and said all his questions had been answered.

OTHER BUSINESS

Vice Chairman Weprin stated that the Board was in receipt of a letter from the attorney for the Club Car Restaurant. Ms. Georgiou stated that this is a two-fold process. 1. The Board takes into consideration the request and 2. If the Board agrees, the hearing is re-opened.

The Board decided to hold off discussion until Chairman Gutterman arrived. The Board moved on to closed applications from earlier in the evening.

CLOSED APPLICATIONS

1. Application #18SP-2009, LUCIANO SAVONE D/B/A ENZO'S RESTAURANT, 443-451 Mamaroneck Avenue (Section 9, Block 11, Lot 5), to renew a modified special permit to operate and expand a restaurant into an adjacent building. (C-2 District)

The Board discussed the merits of the application.

On motion of Ms. Kramer, seconded by Mr. Sullivan, the application to renew the special permit is approved without a term limit.

Ayes: Kramer, Sullivan, Weprin
Nays: None
Absent: Gutterman, Neufeld

2. Application #3A-2013, ELIZABETH PAUL, 200 Fulton Road (Section 9, Block 22, Lot 16), for an area variance of Article V, Section 342-27 of the Schedule of Minimum Requirements where the applicant proposes to install a 10 foot by 12 foot storage shed on an existing concrete slab where the proposed shed has a 3.2 foot lesser side yard where 6 feet is required. The shed also violates the combined side yard setbacks where the applicant proposes 10.6 feet and 16 feet is required. (R-2F District)

The Board discussed the merits of the application. Ms. Kramer stated that she is comfortable approving the variance as long as it's to install the shed. Mr. Sullivan stated that the Board has granted similar variances before. It was also noted that the Town of Mamaroneck was in favor of the application because it would stop the encroachment onto the Town's property.

On motion of Mr. Sullivan, seconded by Ms. Kramer, the application for area variances is approved.

Ayes: Kramer, Sullivan, Weprin
Nays: None
Absent: Gutterman, Neufeld

OTHER BUSINESS

At this time the Board asked that Mr. Noto address the Board in relation to the Club Car Restaurant's request for reconsideration of the recently approved amended special permit, in particular, two conditions imposed by the Board.

Paul Noto, the attorney for the Club Car Restaurant, addressed the Board. He stated that the Board recently granted a special permit to the restaurant with numerous conditions. Of those conditions, two of them are problematic, Mr. Noto said. The conditions are E (ii), which closes down outdoor seating by 9:00 p.m. and E (iv) which prohibits live music, Mr. Noto stated. He said that the restaurant had a choice of filing an Article 78 proceeding or reaching out to the Board. Mr. Noto stated that Lester Steinman, counsel to the ZBA, said that the restaurant could write a letter to the Board and see if these two conditions are negotiable. He stated that the applicant would re-notice for the public hearing.

Vice Chairman Weprin stated that he feels the Board took the time to determine the appropriate conditions. Mr. Noto stated that the restaurant owner feels that the 7:00 p.m. last seating is not workable. He noted that the hours area residents were complaining about were after 11:00 p.m., and not during the dining hours of 6:00 p.m. to 10:00 p.m. Mr. Noto stated that limiting the outdoor dining hours to 9:00 p.m. would essentially make it impossible for the restaurant to compete with other restaurants during the warmer weather months.

Ms. Kramer stated that she did not believe that opening the outdoor area for lunch was discussed for weekdays. Mr. Noto stated that he feels it's also wrong to put parameters on the Village Manager with respect to the cabaret license. He stated that the restrictions on the special permit make it difficult for the restaurant to compete in the summer months.

Ms. Georgiou stated that the Board needs a simple majority to consider the two conditions imposed by the Board. Vice Chairman Weprin stated that he would rather wait until Chairman Gutterman arrived in order for him to have the opportunity to vote.

The Board took a break at 7:54 p.m. and reconvened at 8:02 p.m. Chairman Gutterman joined the meeting at this time.

Paul Noto, the attorney for the Club Car Restaurant, addressed the Board again. He recapped what he had said earlier in the evening before Chairman Gutterman arrived. He said the economics of the restaurant doesn't work with respect to having the last seating at 7:00 p.m. Mr. Noto indicated that the restaurant owner is only asking for a level playing field. He noted that

there hasn't been a complaint about the restaurant since July of 2012. Mr. Noto stated that he would like to have the opportunity to present the restaurant's position.

Ms. Georgiou explained that the Board looks at the issue of reconsideration first and then the matter is re-noticed for a hearing to consider the two conditions imposed by the Board.

Mr. Weprin stated that the Board did take time to consider the outdoor seating hours, but said that they didn't consider some of the issues Mr. Noto has raised. Ms. Kramer stated she did not recall any discussions at the prior meetings in which the restaurant asked for weekday lunch hour outdoor dining and now they are asking for it. Ms. Kramer stated that she doesn't want to set a precedent that if an applicant doesn't like conditions of a resolution, then they can come back to ask for changes.

Ms. Georgiou noted that from a procedural standpoint, this situation is different from a rehearing on a variance determination or interpretation. This does not involve the exercise of the Board's appellate jurisdiction. This is more of an informal process, she indicated, since the applicant is asking the Board to reconsider two conditions of the amended special permit.

Mr. Weprin stated that he would be willing to re-visit this matter. Mr. Sullivan stated that he voted yes on the special permit and would have given the restaurant more hours. He went on to say that the Board did spend time on this matter. Mr. Sullivan said that he would go along with re-opening the hearing if the Board was so inclined.

Chairman Gutterman stated that there were people who came out to voice their concerns about the noise issues. He said the Board was supplied with a lot of information and spent a good deal of time deliberating. Chairman Gutterman said he worries about setting a precedent for people to request a revision of a special permit.

Mr. Sullivan stated that he recalled an application where the applicant (a diner) was denied a special permit. The applicant asked to come back and the Board did grant the special permit. Chairman Gutterman stated that he is willing to consider reconsideration of the determination of the amended special permit approval [conditions E (ii) and E (iv)].

On motion of Mr. Weprin, seconded by Mr. Sullivan, the request to re-open the hearing on special permit #14SP-2012 to revisit conditions E (ii) and E (iv) of the resolution dated January 3, 2013.

Ayes: Gutterman, Kramer, Sullivan, Weprin
Nays: None
Absent: Neufeld

Mr. Noto thanked the Board and said his client would be back in March or April.

CLOSED APPLICATIONS

1. Application #16SP-2009, MAMARONECK BEACH & YACHT CLUB, LLC., 700 South Barry Avenue (Section 4, Block 77, Lot 31), to renew a special permit to host non-member events. (R-10 District)

The Board discussed the merits of the application. Mr. Weprin stated that the problem is not with the special permit, but other issues that have come up during the public hearings. Mr. Sullivan stated that the Club provided the Board with tax filings and non-member event affidavits. Mr. Weprin questioned what the remedy would be to some of these outstanding issues.

Ms. Georgiou stated that the other matters not related to the special permit should be viewed as enforcement issues. She asked Mr. Angiello if there are any pending violations against the Club. Mr. Angiello stated that there were no violations. Ms. Georgiou stated that the Board could condition approval of renewal on having the Building Department inspect the premises to see if the Club is zoning compliant.

Chairman Gutterman stated that this is a permit to hold non-member events and questioned what the impact is to the surrounding community members to host non-member events. He said he felt the enforcement component was beyond this Board's purview.

Mr. Weprin stated that he agrees with the Chairman in that the application is to renew a special permit. However, he said Mr. Neufeld (at the previous meeting) brought up issues of illegal activity. He said that absent a violation, it would be difficult for the Board to deny. Chairman Gutterman stated that the Board is not passing judgment on the filings.

Ms. Kramer stated that the issue that was raised is what the Club is. She said the opponents brought up serious points. Ms. Kramer stated that she did some research and the Club acquired the property about the same time the Village was changing the definition to stop people from converting to large residential communities. Just as the definition of non-member events may have been intended to cover something that wasn't real, it may have been that the definition of club was written intended to protect all of the clubs that existed without knowing how the clubs operated, Ms. Kramer noted. She said she is not sure about some of the facts and not sure that the Club has been doing something different, but none of this was in the record. She went on to say that the Board wouldn't grant a special permit to a restaurant that they knew wouldn't be run as a restaurant. Ms. Kramer said she has concerns that there isn't anything in the record that clarifies these issues. They do not meet the definition of non-member events, she said.

Mr. Weprin stated that the concern that was raised about the issues are serious, but doesn't believe the Board is capable of addressing it here, he said. The Board discussed that fact that the Club doesn't meet the letter of the law, but perhaps meets the spirit of the law. It was noted that all the clubs don't adhere to the code with respect to non-member events.

Mr. Weprin asked if the Board needs to define/interpret a non-member event in the special permit. Chairman Gutterman and Ms. Kramer felt the Board must define it. Mr. Sullivan said

the Board, in the past, defined a structure and that has come back to bite the Board on many applications. He said he would hesitate to define non-member events.

Per the January 3rd meeting minutes, Ms. Georgiou stated that the Orienta Beach Club defines a member event when a member has an event or sponsors an event. They appear to have created some flexibility as to how they define events, Ms. Georgiou stated. The question is, does the ZBA at this point offer an interpretation of that provision of the zoning code and/or request that the Board of Trustees look at the language and clarify the language. Mr. Weprin stated that he believes the Orienta Beach Club said that all non-member events had to be sponsored by a member. Mr. Weprin stated that he is fine with non-member events not sponsored by members as long as they stay within the 20% requirement.

Ms. Kramer said that maybe the Board could reference that the definition of the code doesn't seem to be accurate as to what goes on and we will interpret so as to allow these types of events to be covered by non-member events and ask the BOT to clarify. Mr. Weprin said he agrees with Ms. Kramer and need to be clear in case there is an appeal that the Court is confused and sends it back to the ZBA.

Chairman Gutterman asked how the Board could request the BOT review the language in the code. Ms. Georgiou stated that the Board could do it formally by resolution or it could be done through counsel. Ms. Georgiou stated that she could draft a letter to the trustees for review by the ZBA before it goes out. The Board agreed to have Ms. Georgiou draft a letter to the BOT.

Ms. Georgiou stated that she would prepare a draft resolution for the Board to consider at the March meeting. Mr. Weprin asked if the Board had time to carry it over to March and Ms. Georgiou stated that because it is a special permit, the Board has time.

2. Application #26SP-2006, ORIENTA BEACH CLUB, 1025 Rushmore Avenue a/k/a 1054 Walton Avenue (Section 9, Block 98, Lot 1), to renew a special permit to host non-member events. (R-15 District)

The Board discussed the merits of the application. Mr. Weprin stated that this is a simpler application because no one has disputed how the Club is run. Mr. Angiello noted that the Club has a Knox Box violation for the gate. Language in the resolution would address that matter, the Board decided.

Ms. Georgiou stated that she would prepare a draft resolution for the Board to consider at the March meeting.

3. Application #35A-2012, SRN CORP. D/B/A SARAH NEUMAN CENTER, 845 Palmer Avenue (Section 9, Block 3, Lot 3B), for a variance to facilitate renovation and expansion of a nursing home facility, including a two-story 19,108 square foot addition with additional parking where the applicant proposes 30% land area coverage and 25% maximum land area coverage is allowed pursuant to Article VII, Section 342-52.1(D) (Building Coverage) (RM-2 District)

Ms. Georgiou noted for the record that the applicant gave the Board a one-day extension to make a determination on the application as this is the 63rd day since the public hearing was closed.

Chairman Gutterman asked if anything has changed with respect to the Planning Board or HCZM. Ms. Georgiou noted that the matter is still status quo and the applicant is waiting for the ZBA to make a determination before they go to HCZM. Ms. Georgiou stated that the other Boards are waiting to hear from the ZBA before the applicant goes before the HCZM. Ms. Kramer asked why the nursing home is going before HCZM. Ms. Georgiou stated that she believes this is an unlisted action which needs to be referred to HCZM for LWRP consistency.

Chairman Gutterman stated that the issue is lot coverage, by virtue of the fact that it's a nursing home and they are looking for a larger percentage of lot coverage than the as of right zoning would allow.

Ms. Georgiou stated that the lot coverage is the requirement of the special permit. The special permit for the nursing home is granted by the Planning Board, she said. There is also sight plan approval by the Planning Board, she noted. Ms. Georgiou stated that there are a limited number of special permits that are granted by the Planning Board.

Ms. Kramer asked if the applicant needs variance on lot coverage in order to obtain a special permit and Ms. Georgiou indicated that they do. All the requirements set forth under Chapter 342-52.1 for nursing homes in residential districts need to be addressed and the Planning Board will be reviewing those requirements.

Mr. Sullivan stated that he had no issue with the expansion, but does have an issue with the fact that the construction is going to take a long time and cause a lot of traffic congestion in the area. Once the construction is completed, everything should be fine, Mr. Sullivan said.

Mr. Weprin stated that this is a major variance, but it's a unique circumstance. He went on to say that it is a good project and fits in with this location. He said he was troubled by the size of the variance, but would lean toward approval.

Ms. Kramer stated that the aspect that sways her to approve the application is that the applicant is putting a green roof and pervious surfacing so that even though technically the lot coverage is increasing, it isn't going to have as deleterious effect on the surrounding environment as if they were simply paving over grass with hard surfacing.

Chairman Gutterman said that during construction, there will be an impact on the community. He also stated that he is in favor of the application after taking a hard look. Chairman Gutterman noted that the nursing home is not increasing the number of beds. He said there are limitations with the existing building design. He also noted the increased pervious space.

Ms. Kramer stated that, with respect to the construction impacts, the applicant did complete an EIS, so these issues have been looked at and addressed. Ms. Kramer said that she is not sure there are any alternatives that the Board can suggest or impose to decrease the impact during construction. Chairman Gutterman stated that he is also trusting that site plan is being handled

responsibly. Ms. Georgiou asked if the Board wished to condition the approval on the applicant gaining approval from the HCZM. Chairman Gutterman questioned whether the Board needed to do that. Mr. Weprin stated that the Board originally felt the applicant should go to the HCZM before making a determination. Chairman Gutterman stated that the boilerplate language in the resolution would suffice.

On motion of Mr. Sullivan, seconded by Mr. Weprin, the application for an area variance is approved.

Ayes: Gutterman, Kramer, Sullivan, Weprin
Nays: None
Absent: Neufeld

4. Application #2I-2012, HENRIETTE MCCABE, regarding 418 North Barry Avenue (Section 4, Block 27, Lot 12), for an appeal of the issuance of a building permit (revision) for authorized grading changes. (R-5 District)

Chairman Gutterman noted for the record that emails were sent on January 20, 2013 and January 21, 2013 by Ms. McCabe regarding calculations from Ms. McCabe's engineer, which he had not provided to the Board during the public hearing. Chairman Gutterman stated that he was also troubled by Mr. Tiekert's email suggesting that the Chair was hiding behind the attorney regarding submitting additional documentation to the Board. He noted that he reviewed the DVD of the meeting. Chairman Gutterman stated that he wished to re-open the hearing so that information can be added and he would like the Village Engineer to respond notwithstanding the question of jurisdiction.

Mr. Sullivan stated that he was confused and asked for clarification as to what was provided to the Chair. Chairman Gutterman stated that the engineers made many statements during the hearing. He said that Ms. McCabe's engineer is stating that the required amount of containment is deficient by approximately a factor of three. The Village Engineer indicated that the amount provided is adequate, Chairman Gutterman said. He noted that Ms. McCabe's engineer provided calculations showing the higher values that were not provided during the hearing. Chairman Gutterman said that in reviewing the DVD, although the information was not directly requested by the Board, a statement was made in the email that as Chair, he would have discretion to admit this information into the discussion now after the hearing is closed. Chairman Gutterman stated that he does not believe he has the authority to do so. However, having seen the information, Chairman Gutterman feels the hearing should be re-opened. He said he wanted to be fair and thorough.

Ms. Kramer asked if the emails were only sent to the Chair. She noted that she hasn't seen them. Chairman Gutterman said that the Board did not see the emails; they were emails sent to counsel and he was copied on them. Ms. Kramer said that it is difficult to make a determination since she hasn't seen the information.

Ms. Georgiou stated that based on past practice, the rule of the Board has been that once the public hearing is closed, no further submissions are accepted. Basically, the chair is contacted about the matter by the ZBA secretary and that is how it's been handled in the past.

Ms. Kramer noted that people have sent information to the Board in the past. Mr. Weprin stated that in those instances, submissions were sent directly to the Board members. In this situation, counsel is saying it was done the proper way by going through the ZBA office, he said.

Ms. Kramer said there is no question that the Board can't consider something submitted after the hearing is closed. In order to re-open the hearing, the Board needs a basis to re-open, Ms. Kramer noted. The Board does not have a basis, she said. Chairman Gutterman stated that he believed he gave the Board a basis.

Ms. Georgiou said that typically the applicant will request a re-opening of the hearing and that request will go to the ZBA secretary. That didn't happen this time, she indicated.

Chairman Gutterman noted for the record that the applicant is in the audience. Ms. McCabe stated that she did not know that she could request to re-open the hearing. Chairman Gutterman referenced the open meetings law and the fact that the Board was presently doing business. He asked Ms. McCabe if she would like to re-open the hearing and she said yes. Chairman Gutterman stated that the Board received a request to re-open the hearing.

Ms. Georgiou stated that the vote does not have to be unanimous. She also noted that the hearing must be properly re-noticed.

Mr. Sullivan stated that he doesn't know why the Board is re-opening the hearing and doesn't feel there is jurisdiction on this matter. Chairman Gutterman said that he understands and respects Mr. Sullivan's point of view, however, the Board also said that it would hear and receive information and this is important and relevant information. Mr. Weprin said he did not believe the Board was making a determination on jurisdiction by re-opening the hearing.

On motion of Mr. Weprin based on the Chairman's representation, seconded by Ms. Kramer, the request to re-open the hearing on Application #2I-2012 was approved.

Ayes: Gutterman, Kramer, Weprin
Nays: Sullivan
Absent: Neufeld

Chairman Gutterman stated that he would like to request that the Village Engineer attend the March 7th meeting and be prepared to discuss in greater detail than he did at the last hearing since the Board is going to continue this.

5. Application #1I-2013, STUART TIEKERT, regarding 0 Pine Street (Section 4, Block 54, Lot 23A), for an appeal of the issuance of a building permit and Storm Water Pollution Prevention Plan to construct a single-family house. (R-5 District)

Mr. Sullivan asked how the Board should proceed if the members feel the Board does not have jurisdiction in this matter. Ms. Georgiou stated that the Board should reference the appeal based on Section 342-75 (b) and (d) and Section 186-10(B)2. The Board then should provide some reasoning as to why they do not have jurisdiction. Mr. Sullivan stated that per Section 342-75 (b), this is not open land; it is a developed property. He went on to say that an empty lot that is buildable is not considered open land. Chairman Gutterman stated that the Board had a similar discussion in the context of another application. Ms. Georgiou said that this is a single-family home. Chairman Gutterman stated that site plan is not required for single-family homes. Mr. Sullivan stated that falls under Section 342-75(d). As for Chapter 186, Mr. Sullivan asked where the Board gets the authority to interpret that portion of the code. Ms. Georgiou referenced a prior decision by the Board from the past year, Application #1I-2012 (818 The Crescent) and in that resolution the Board determined: "the Board is not the proper forum for review or enforcement of determinations made pursuant to Chapter 186. The Building Inspector is the local administrator charged with administration and implementation of this chapter. Jurisdiction over appeals relating to the administration and enforcement of Village Code Chapter 186 by the Building Inspector is expressly conferred upon the Planning Board (see Village Code § 186-6)." That is in the resolution, Ms. Georgiou stated. Mr. Sullivan said he would adopt that into his motion.

Ms. Kramer said the Board does have jurisdiction to hear an appeal of Chapter 342-75. In light of that, Mr. Sullivan said he would make a motion to deny the application under Chapter 342-75. Ms. Kramer said that she would second the motion because this is not a use of open land. Development is not a use of open land, she said. Ms. Georgiou said that what the Board is saying is that there has been no violation of Chapter 342-75 (b) or (d).

Ms. Kramer stated that the issues with Chapter 186 may be of serious concern, but not within the Board's purview.

On motion of Mr. Sullivan, seconded by Ms. Kramer, per Chapter 342-75 (B) & (D), the application was denied and per Chapter 186, the Board has no jurisdiction.

Ayes: Gutterman, Kramer, Sullivan, Weprin
Nays: None
Absent: Neufeld

ADJOURN

On motion of Chairman Gutterman, seconded by Mr. Weprin, the meeting was adjourned at 8:59 p.m.

Ayes: Gutterman, Kramer, Sullivan, Weprin
Nays: None
Absent: Neufeld

ROBIN KRAMER
Secretary

Prepared by:
Ann P. Powers